BAIL SLIP

THE PETITIONER/ACCUSED NAMELY M.V.NATHAN, WAS DIRECTED TO BE RELEASED ON BAIL IN CRL.M.P.NO. 5804/99 IN C.A.NO.545/99 DATED 20.7.1999 BY THE HON'BLE COURT.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.545 of 1999

M.V.Nathan .. Appellant/Accused

vs.

State rep by
The Special Police,
Establishment/Central Bureau
of Investigation/Anti-Corruption
Branch, Chennai. .. Respondent/Complainant

Prayer: This Appeal has been preferred against the judgment dated 30.6.1999 made in C.C.N O.130 of 1997 on the file of the Principal Special Judge for CBI cases, Chennai.

For Appellant : Mr.V.Gopinath, Senior Counsel,
for S.Suresh

For Respondent : Mr.N.Chandrasekaran
Special Public Prosecutor for CBI Cases

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.130 of 1997 on the file of the Principal Sessions Judge for CBI Cases, Chennai. Originally there were two accused in this case viz.M.V.Nathan (A1) and M.C.Ramamoorthy (A2). A2-M.C.Ramamurthy absconded pending trial, hence the case against A2 was split up as C.C.No.130 of 1997 from C.C.No.1 of 1994.

2.The short facts of the prosecution case is that while A1-M.V.Nathan/Appellant was working as a Branch Manager in Indian Overseas Bank, Gudiyatham Branch, during 1989-90, he had entered into a criminal conspiracy with the other accused and in pursuance of the said

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conspiracy this accused has sanctioned five loans under SEEUY (Self Employment to Educated Unemployed Youth) scheme for providing self employment to educated unemployed youth in the name of One Krishnamurthy under loan No.3/89 for Rs.35,000/- dated 15.2.1989 for setting up an oil Expeller through the DIC, loan No.6/89 for Rs.25,000/- dated 2.3.1989 in the name of M.S.Umapathy, to purchase a paddy thrasher, through the DIC, Loan No.13/89 for Rs.25,064/- dated 4.5.1989 in the name of K.C.Jagadeeswran for purchase of paddy thrasher through the DIC, Loan No.22/89 for Rs.35,000/- dated 23.5.1989 in the name of S.Ramachandran, to start a 500 litre Milk Chilling Plant, through the DIC, Loan No.24/89 for Rs.25,000/- in the name of Dasarathan, to start a Jaggery Manufacturing Unit through the DIC. All the above said loan were sanctioned by the accused M.V.Nathan to the above five persons on the basis of bogus invoices and cash bills prepared by the absconding accused M.C.Ramamurthy (A2) in the name of M/s.Sri Lakshmi Traders No.73/1 Pillaiyar Koil Street, Gudiyatham, which is a fictitious firm floated by the absconding accused M.C.Ramamurthy (A2) for cheating Indian Overseas Bank. The appellant M.V.Nathan had sanctioned the above said loans without conducting pre and post sanction verifications. Thus the accused M.V.Nathan had abused his official position as a public servant favoured and obtained for the absconding accused M.C.Ramamurthy (A2) thereby causing wrongful loss to the tune of Rs.1,45,000/- to the Indian Overseas bank and thereby committed an offence punishable under Section 120(B) r/w 420, 467, 468, 471 r/w 465 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3.Since the accused/appellant is no longer in service the complaint has been preferred without obtaining any sanction for the prosecution. On appearance of the accused on summons, copies under section 207 of Cr.P.C., were furnished and when the charges were framed and questioned the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.15 were examined and Ex.P.1 to Ex.P.51 were marked.

4.Out of the 15 witnesses P.W.5, P.W.7 & P.W.8 have turned hostile. P.W.1 was working as a Deputy Manager of IOB, Gudiyatham Branch, during the relevant period and he speaks about the procedure relating to the sanction of loans to unemployed youth under SEEUY scheme.

5.P.W.2 was working as an Officer in IOB, Regional Office, Vellore, during the relevant period and he also speaks about the sanction of loan to P.W.5 for purchasing an Oil Expeller and grant of loan to P.W.6, P.W.7 & P.W.8 for the purchase of paddy hulling machine and grant of loan to one Dhasarathan for the purchase of Timber sawing machine. He would depose that Ex.P.20-letter addressed by A2 to Zonal Manager IOB, Vellore, which incriminates A1 and A2 with the crime.

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6.P.W.3 is a resident of Gudiyatham, who would speak about the rental agreement-Ex.P.7 entered into between him and P.W.5.

7.P.W.4 is also a resident of Gudiyatham, who speaks about the taking of a shop belonging to P.W.3 on lease and that there was no shop in the name of Lakshmi Traders adjacent to his shop.

8.P.W.5, P.W.6, P.W.7 & P.W.8 are the loanees, who have obtained loan of Rs.35,000/-, Rs.25,000/- and Rs.25,000/- respectively from IOB, Gudiyatham Branch, for purchasing of Oil Expelling machine, paddy hulling machine and paddy hulling machine respectively. P.W.5 admits the tenancy agreement under Ex.P.6 with P.W.3. Since P.W.5 and P.W.7 have not supported the case of the prosecution, they have been treated as hostile witnesses by the prosecution.

9.According to P.W.6, on the instructions of A1 he approached A2 and obtained quotation from him under Ex.P.21 and on that basis he had availed the loan of Rs.25,000/- from IOB. According to him. A1 had demanded a percentage from the loan sanctioned towards illegal gratification and that he has also paid Rs.2,500/- to A1 and Rs.500 to A2 as a bribe for the sanction of the loan. According to him, even without purchasing the paddy hulling machine the entire loan amount was sanctioned and dispersed to him.

10.P.W.9 is an Officer-cum-Accountant in IOB, Gudiyatham, during the relevant period. He speaks about A2, who has opened a current account in the name of Sri Lakshmi Traders on 17.2.1989 with the IOB, Gudiyatham Branch and that on 17.2.1989 he was introduced by P.W.10 who is already having an account with the said branch of IOB.

11.P.W.10 also speaks about the introducing of A2 for opening current account in IOB, Gudiyatham Branch.

12.P.W.11 is the owner of a Timber Depot in Gudiyathm and he speaks about renting out his premises to one Dasarathan on 30.3.1989 on the basis of rental agreement Ex.P.38. But the timber sawing machine was not erected in the said place.

13.P.W.12 is the then Metropolitan Magistrate, Egmore, Chennai, who would depose about the recording of a statement under Section 164 of Cr.P.C. From A2 and the proceedings relating to that have been marked as Ex.P.39 to Ex.P.43. Ex.P.42 is the statement recorded the said Magistrate from A2 under Section 164 of Cr.P.C.

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14.P.W.13 is an handwriting expert, who had compared the disputed signature in the document with that of the admitted signature of A1 & A2 and has given an opinion under Ex.P.45-report that the disputed signature in the documents does not relate to A1 but the same relates to A2.

15.P.W.14 is a resident of Gudiyatham, who had sublet his premises to A2.

16.P.W.15 is an Investigating Officer, who after examining the witnesses and recording the statements of the witnesses and after following the formalities had filed the final report against the accused. According to him, no incriminating documents or any cash or any jewels recovered from A1 during the search.

17.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied their complicity with the crime. After going through the material placed before the trial Court and after scanning the evidence both oral and documentary, the learned trial Judge has come to the conclusion that this appellant/A1 is guilty under Sections 120(B) r/w 420, 467, 468, 471 r/w 465 IPC and under Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and convicted the accused under Section 120(B) r/w 420, 467, 468, 471 r/w 465 IPC and sentenced to undergo one year RI and also convicted the accused under Section 420 IPC and sentenced to undergo two years RI and convicted the accused under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced to undergo two years RI and a fine of Rs.500/- in default to undergo 6 months RI. Aggrieved by the findings of the learned trial Judge, the accused-1 has preferred this appeal.

18.Heard the learned Senior Counsel Mr.V.Gopinath and the learned Special Public Prosecutor for CBI Cases Mr.N.Chandrasekaran and considered their respective submissions.

19.The learned Senior Counsel Mr.V.Gopinath would submit that he is not going to touch upon the merit of the case but only on the sentence. The learned Senior Counsel would represent that the accused was aged 68 years (as per the statement under Section 313 of Cr.P.C.) at the time of awarding of he sentence by the the trial Court and now he is aged 76 years and he is no more in service and had undergone by-pass surgery and his entire movement are restricted and he is not able to move freely without the assistant and at this advanced age he will not survive in prison. The learned senior counsel relying on 2007 (1) LW (Crl) 123 (S.P.Meiappan appellant/A1 in Crl.A.719/00 & G.Chandragiri appellant/A2 in Crl.A.720/00

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Vs. State rep by the Deputy Superintendent of Police, CBI (V & A.C), Chennai), would contend that while confirming the conviction the sentence alone can be modified to that of one year SI under Section 120(B) r/w 420, 467, 468, 471 r/w 465 IPC instead of two years RI and also one year SI under Section 420 IPC instead of two years RI and also one year SI under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, instead of two years RI, to enable the accused to approach the State Government under Section 432(3) of Cr.P.C., for conversion of simple imprisonment to fine. The learned Special Public Prosecutor has not raised any serious objection for this course on the ground of the advanced age of the accused.

20. Under such circumstances, considering the age of the accused and the fact that he has already repaid the entire amount of ill gotten money and also the fact that the accused had undergone by-pass surgery even in the year 1990, I am inclined to modify the sentence alone as indicated above. As far as the conviction of the trial Court is concerned the same is confirmed, but the sentence alone is modified as follows:-

As far as the sentence under Sections 120(B) r/w 420, 467, 468, 471 r/w 465 IPC is concerned the sentence of one year RI is modified to that of one year SI and under Section 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, is concerned the sentence of two years RI for each offence is modified to that of one year SI each. The appellant/A1 is further directed to pay an additional fine of Rs.25,000/- to be deposited before the Principal Sessions Court for CBI Cases, Chennai, to enable the appellant/A1 to approach the State Government under Sub-section 3 of Section 432 of Cr.P.C., for conversion of simple imprisonment to fine. Since there is no loss to the bank and no complaint has been preferred by the bank in this case, it is further recommended to the State Government to release the appellant/accused on charging fine of Rs.3000/- and to pass an appropriate order to that effect within a period of three months from this date. The appellant shall deposit the additional fine of Rs.25,000/- imposed by this Court and also the altered fine of Rs.3000/- before the trial Court within a period of three weeks from today and appraise the State Government to dispose of this application. On doing so, the appellant need not undergo the sentence of imprisonment, otherwise he shall undergo the modified sentence as stated earlier. With this direction Crl.A.No.545 of 1999 preferred by the appellant/A1 stands disposed of.

ssv

Sd/
Asst. Registrar

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To

1.The Principal Special Judge
for CBI Cases, Chennai.

2.The Special Police,
Establishment/
Central Bureau of Investigation
Anti-corruption Branch, Chennai.

3.The Special Public Prosecutor
for CBI Cases.Madras.

+ One cc to Mr. L. Mahendran, Advocate SR 37725

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Crl.A.No.545 of 1999
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